

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOEL TOLBERT,
Plaintiff,

v.

ANTIOCH POLICE DEPARTMENT, et al.,
Defendants.

Case No. [22-cv-02026-JSC](#)

**ORDER INSTRUCTING CLERK TO
MAIL WAIVER OF SUMMONS
FORMS FOR DEFENDANTS
CANTANDO AND PERKINSON;
DISMISSING DEFENDANT CONTRA
COSTA COUNTY DETENTION
HEALTH SERVICE; SCHEDULING
MOTION FOR SUMMARY
JUDGMENT**

Plaintiff, a California prisoner proceeding without being represented by an attorney, filed this civil rights complaint under 42 U.S.C. § 1983 against the Antioch Police Department (“APD”), APD Chief Allen Cantando, APD Officer James Colley, APD Officer James Perkinson, and the Contra Cost County Detention Health Service (CCCDHS). Summonses issued to Defendants Cantando, Perkinson, and CCCDHS were returned by the Marshal unexecuted. (ECF Nos. 13, 15, 16.) The motion to dismiss by the served Defendants was denied on November 11, 2023. (ECF No. 56.)

With respect to Defendants Perkinson and Cantando, counsel for the served Defendants (APD and Colley) have advised the Court it has been authorized to execute and return a waiver of summons under Rule 4(d) of the Federal Rules of Civil Procedure on behalf of Defendants Perkinson and Cantando. (ECF No. 57.) Accordingly, the Clerk is instructed to mail waiver of summons forms for Defendants Perkinson and Cantando to counsel for Defendants APD and Colley. The executed waiver of summons forms shall be filed on or before **March 5, 2024**, and Perkinson and Cantando shall file an answer to the second amended complaint in accordance with

the Federal Rules of Civil Procedure.¹

As for Defendant CCCDHS, on November 11, 2023, because well more than 120 days had passed since the complaint was filed and Plaintiff had not served this Defendant as required by Rule 4(m) of the Federal Rules of Civil Procedure or provided the Court with an address where the Marshal could effectuate service, the Court instructed Plaintiff as follows: “On or before December 29, 2023, Plaintiff shall provide the Court with a current address for Defendant CCCDHS to allow for service. Failure to do so will result in dismissal of the claims against CCCDHS without prejudice.” (ECF No. 56 at 14:25-27). Plaintiff has not provided the Court with a current address for CCCDHS. Accordingly, the claims against Defendant CCCDHS are DISMISSED under Rule 4(m) without prejudice.

Plaintiff filed a copy of his Request for Production of Documents. (ECF No. 60.) Plaintiff is advised that discovery requests are only served on parties, they are not filed with the court. *See, e.g.,* Fed. R. Civ. P. 34(a) (“A party may serve on any other *party*” a request for production of documents) (emphasis added). Plaintiff shall not file any further discovery requests with the court.

To facilitate the resolution of this case, the Court orders as follows:

1. No later than **May 6, 2024**, Defendants shall file a motion for summary judgment. The motion shall be supported by adequate factual documentation and shall conform in all respects to Federal Rule of Civil Procedure 56 and shall include as exhibits all records and incident reports stemming from the events at issue. If Defendants are of the opinion that this case cannot be resolved by summary judgment, they shall so inform the Court prior to the date the summary judgment motion is due. All papers filed with the Court shall be promptly served on Plaintiff.

2. At the time the summary judgment motion is served, Defendants shall also serve, on a separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc). *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

3. Plaintiff's opposition to the summary judgment motion, if any, shall be filed with the

¹ Defendants APD and Colley have already filed an answer to the second amended complaint. (ECF No. 59.)

1 Court and served upon Defendants no later than **June 10, 2024**. Plaintiff must read the attached
2 page headed "NOTICE -- WARNING," which is provided to him pursuant to *Rand v. Rowland*,
3 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

4 4. Defendants shall file a reply brief no later than **14** days after the opposition is filed.

5 5. The motion shall be deemed submitted as of the date the reply brief is due. No hearing
6 will be held on the motion unless the Court so orders at a later date.

7 **IT IS SO ORDERED.**

8 Dated: February 6, 2024

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11 JACQUELINE SCOTT CORLEY
12 United States District Judge
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United States District Court
Northern District of California